

Lathrop v. Unidentified, Wrecked & Abandoned Vessel, [817 F. Supp. 953 \(M.D. Fla. 1993\)](#).

Location: Florida— land owned or controlled by the United States (80 degrees, 41.5 minutes west longitude and 28 degrees, 44 north latitude)

Applicable Laws: [Antiquities Act \(16 U.S.C. §§ 431 *et seq.*\)](#)
[Rivers and Harbors Act of 1899 \(section 10\) \(33 U.S.C. § 403\)](#)

Where Laws Apply: *Antiquities Act:* Land owned or controlled by the United State government, including the outer continental shelf

Rivers and Harbors Act: Lands associated with navigable waters, including inland waters, the territorial sea, and the outer continental shelf

Holding: The Antiquities Act and section 10 of the Rivers and Harbors Act of 1899 have constitutionally altered substantive maritime law. Therefore, before conducting salvage activities under maritime law, the federal government may require compliance with the permitting provisions of the Antiquities Act and the Rivers and Harbors Act.

General Facts:

In 1984, Randy Lathrop discovered several gold coins while scuba diving within the Cape Canaveral National Seashore, which is protected and managed by the National Park Service as the result of an agreement with the State of Florida. Lathrop believed that he had discovered the remains of an 18th-century shipwreck and, in 1988, he filed an *in rem* action seeking title to the alleged wreck under the law of finds and alternatively a reward under the law of salvage. The court arrested the vessel and appointed Lathrop as temporary custodian. While he had rights to salvage under maritime law, Lathrop ran into several problems over the next few years with the State of Florida, the National Park Service, and the U.S. Army Corps of Engineers (Corps) in regard to compliance with state and federal laws because Lathrop had failed to apply for the appropriate permits from the State of Florida and the Corps.

In 1990, Lathrop filed a motion for a preliminary injunction arguing that the United States was interfering with his right of salvage under maritime law. The court granted the motion finding that the United States did not have constructive possession over the alleged vessel and, therefore, could not defeat Lathrop's salvage claim by stating that Lathrop's services were unwelcomed; the court later extended the injunction to include the State of Florida.

Later in 1990, Lathrop and the State discussed permitting options, but those negotiations were soon overshadowed when an attorney for the Corps informed Lathrop and his attorney that the courts could not preclude the United States from regulating salvage operations that occurred within the Corp's jurisdiction over all dredging operations conducted in tidal waters (i.e., between the high water line and the outer limits of the outer continental shelf). Although the Corps insisted that Lathrop obtain a permit before resuming his salvage of the site, Lathrop resumed his salvage operation anyway. The Corps issued a cease and desist order, in which the

Corps informed Lathrop that if he failed to comply the Corps would pursue legal action. Eventually, Lathrop agreed to apply for the appropriate permits. In March of 1992, Lathrop was informed that his permit with the Corps had been denied, and he had yet to receive a response from the State of Florida.

Procedural Posture:

In 1993, the District Court for the Middle District of Florida denied Lathrop's second motion for a preliminary and permanent injunction against the federal government interfering with his salvage rights because the court lacked *in personam* jurisdiction over the United States and because Lathrop failed to establish each of the four elements essential to receiving an injunction: (1) substantial likelihood of prevailing on the merits; (2) substantial threat that the plaintiff would suffer irreparable injury if the injunction was not granted; (3) the threatened injury to the plaintiff outweighed the threatened harm; and that (4) the preliminary injunction would not disserve the public interest.

Court Holding and Reasoning:

Although the court discussed all four elements essential to an injunction, the court's analysis focused on Lathrop's likelihood of prevailing on the merits because in order to prove success on the merits Lathrop had to establish that he was entitled to a salvage claim, which Lathrop successfully established. However, the United States argued that Congress had modified substantive admiralty law through laws like the Antiquities Act, the Rivers and Harbors Act, and the National Park Service regulations by restricting the *manner* in which a potential salvor can excavate abandoned shipwrecks located on federal lands (for example, by requiring salvors to obtain permits, comply with certain restrictions, etc.). The court agreed with the United States and determined that Congress was within its power to supplement or alter admiralty law when it enacted laws like the Antiquities Act. While Congress may constitutionally "alter, qualify, or supplement the substantive admiralty law" (*Panama R.R. Co. v. Johnson*, [264 U.S. 375](#), 386 (1924)), it cannot alter the jurisdiction of admiralty law which Article III, section 2 of the U.S. Constitution expressly grants to the judiciary. These laws do not deprive the court of admiralty jurisdiction for vessels located on federal lands but instead require a potential salvor to follow certain rules in order to lawfully salvage vessels located on those lands. Therefore, the court held that laws like the Antiquities Act and the Rivers and Harbors Act of 1899, which contain permitting restrictions for vessels located on federal land, have *legally* altered substantive admiralty law. Because Lathrop did not apply for a permit, his salvage operation was illegal and he would have lost his right to a salvage award.

The court also found that Lathrop would have lost his right to a salvage award because he continued salvaging property on U.S. lands, even after his salvage services had been rejected. The court stated that, although the doctrine of rejection normally applies when a distressed vessel directly rejects a salvor's services, constructive rejection is also possible by which a government entity constructively rejects salvage through existing laws. Constructive rejection requires that those laws put the salvor on notice that his services have been rejected and that the salvor understands the laws rejecting his service. The court, here, did not decide whether the State of Florida or the United States owned the alleged vessel, but did find that Lathrop must have

reasonably known that the State of Florida, the alleged owner of the vessel, had constructively rejected his salvage services through its laws that required him to first obtain a permit.

Therefore, the court denied Lathrop's motion for a secondary preliminary injunction because he failed to establish his likelihood of success on the merits or any of the other three elements.